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Motion Papers for
NO. 354

Filed Oct. 5, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

THE FARMERS' LOAN AND TRUST COMPANY,
Plaintiff in Error,
vs.
THE LAKE STREET ELEVATED RAILROAD COMPANY, THE AMERICAN TRUST AND SAVINGS BANK, AND THE NORTHERN TRUST COMPANY,
Defendants in Error.

Writ of Error to the Supreme Court of Illinois.

MOTION TO DISMISS AND TO AFFIRM BY THE LAKE STREET ELEVATED RAILROAD COMPANY.

CLARENCE A. KNIGHT,
Attorney for The Lake Street Elevated Railroad Company.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

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Motion to Dismiss and to Affirm by The Lake Street Elevated Railroad Company.

And now comes one of the defendants in error, The Lake Street Elevated Railroad Company, and moves the court to dismiss the writ of error in the above entitled cause on the ground that this court is without jurisdiction thereof, and also moves to vacate the order of court directing that said writ of error be made a supersedeas, and to quash said supersedeas; and if this court shall determine that it has jurisdiction of this cause, then the said defendant in error The Lake Street Elevated Railroad

Company moves to affirm the said judgment of the Supreme Court of the State of Illinois, for the reason that it is apparent that the questions left in the record for determination in this court are frivolous, and that the appeal is taken for delay.

1st. The defendant in error The Lake Street Elevated Railroad Company on April 7, 1893, made a trust deed running to the American Trust and Savings Bank as trustee, and the Farmers' Loan and Trust Company as co-trustee, to secure an issue of bonds, the American Trust and Savings Bank being a citizen of the State of Illinois and the Farmers' Loan and Trust Company being a citizen of the State of New York. This suit was brought in the Superior Court of Cook County, Illinois, to appoint a new co-trustee in place of the Farmers' Loan and Trust Company, for the reason that it was not qualified to act under the trust deed under the laws of the State of Illinois; also to enjoin the Farmers' Company *pendente lite* from beginning or prosecuting any foreclosure proceedings under that mortgage, and for general relief. To this bill the Farmers' Loan and Trust Company, the American Trust and Savings Bank and the Northern Trust Company, the owner and holder of 6,594 bonds of $1,000 each, of a total issue of 7,574 bonds, were made defendants. A petition for removal of the cause to the United States Circuit Court was filed by the Farmers' Company. This petition was denied for two ressons: first, because there was no separable cause of action between the Farmers' Company and the Lake Street Company; and second, because the Farmers' Company did not make a bond with sufficient surety, as required by the act of Congress.

A decree was entered June 4, 1896, removing the Farmers' Loan and Trust Company as co-trustee, for a

failure to comply with the laws of the State of Illinois in not making a deposit of $200,000 in securities as condition of its right to do business in that state, and requiring the American Trust and Savings Bank to appoint a new trustee, and in case it failed so to do, then the court reserved to itself the power to make the appointment. An appeal was taken to the Appellate Court of Illinois for the First District, and the Appellate Court on the 9th day of February, 1897, affirmed the decree, and from the Appellate Court an appeal was taken to the Supreme Court. The Supreme Court affirmed the judgment of the Appellate Court June 18, 1898. There was no separable controversy involved entitling the plaintiff in error to a removal.

2nd. Service of process was had of the injunction writ on the day the bill was filed, January 30, 1896, at 11:10 A. M. Service of the summons was had on February 6th. On January 30th, at 10:35 o'clock A. M., the Farmers' Company filed a bill to foreclose in the United States court. No service of process was had until February 18th. A Federal question was not involved by setting forth in the petition for removal the mere fact that foreclosure suit had been begun, but no service of process was alleged or shown. Whether a Federal question was involved must be determined by the complainant's bill, and it could not be injected into the case in the petition for removal, under the section authorizing the removal of a separable controversy. The facts are stated in the opinion of the Supreme Court of Illinois, reported in the Advance Sheets of 173 Ill., at page 439.

3rd. Because the decree enjoined the further prosecution of the foreclosure case, this fact cannot give this court jurisdiction. That was incidental to the decree removing

the Farmers' Company as co trustee. The state court had by first service of process acquired jurisdiction of the persons and subject-matter.

We also submit with this motion a printed brief and argument in support thereof.

THE LAKE STREET ELEVATED RAILROAD COMPANY,

By Clarence A. Knight.

Its Attorney.